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THE MENACE OF LEGISLATION.

BY THE HON. JAMES H. ECKELS, COMPTROLLER OF THE
CURRENCY.

A NUMBER of years since one of the foremost of American writers upon the political and economic history of the country called attention to the growing sentiment of fear with which business men regarded the convening of Congress in legislative session. This was equally apparent whether the legislative machinery was to be in Republican or Democratic hands, or whether the question dealt with was one of tariff revision or currency reform. In the time which has intervened since this fact was first noted, it cannot be said that the business world has become any more reconciled to the recurring sessions of legislative bodies or that it has felt a greater degree of assurance in observing the trend of public legislation. If the exact statistics could be obtained, and the truth stated, the results would undoubtedly show a greater intensity of feeling on the subject now than at the earlier date. It is safe to say that the feeling has not been lessened by the development of a character of law-making in almost every State of the Union, far more disturbing and harmful in its effects than the accomplished or attempted efforts at the national capital. This sentiment of fear and distrust finds expression in the columns of the press and in the private speech of the people and is of sufficient seriousness to warrant a public discussion of the reason for it. There must be something radically wrong, when, admittedly, any considerable body of the conservative people of the country entertain such views and withhold respect from legislatures and from enacted legislation. The final result must be a greatly weakened government and a thoroughly disorganized state of social order.

The origin of this condition of affairs is not difficult of ascer-

tainment, nor is it of sudden growth. It is to be found in the manifest tendency, each year made more perceptible, of the law-making forces, national, State, and municipal, to subject all the undertakings of the private citizen to legislative inquiry and their management to statutory control. Even if such a course was inevitable during the extraordinary exigencies of the war period it is without excuse to-day. The aid of the law is invoked on every hand. The legislature of the nation reaches the affairs of the whole country, that of the State confines itself to State lines. Both proceed upon the theory that every business principle and business enterprise must be regulated by legislative act. The outcome of this wide and extreme exercise of power is a complete thralldom of business and a paralysis of enterprise and stoppage of investment. Nothing could seem more self-contradictory than the statement that the business prosperity of the whole country is delayed and the people impoverished through law, and yet there is absolute truth in the assertion. It cannot be expected that capital will be invested when the suggestion is continually put forth that the basis upon which it is to be expended is liable to change before return is made upon it. The business world knows how essential to business success is stability, and if this is wanting nothing but loss can follow. It awaits some token that the conditions are stable, and that it shall be free from repeated unnecessary legislative interference, before it again calls into activity the means at hand to revive lagging industries and quicken the arteries of trade and commerce.

How completely all this is a reversal of the principles of government invoked at the adoption of the Federal Constitution and the founding of the States is shown by the most casual inquiry. It was then believed that a Republican government should be one of few laws and limited powers. Neither in the enforcement of the one nor in the exercise of the other should there be any attempt to encroach unnecessarily upon the rights of person and of property guaranteed to the citizens. The rights of property were regarded as sacredly as the rights of person, and held to be equally free from invasion. The citizen was, under all circumstances, expected to maintain his individuality. His individual efforts were to work out, without either legislative check on the one hand, or legislative aid on the other, his social and political

status, and his energy and economy to gain for him whatever degree of material prosperity was possible. The right of governmental interference, even to the extent of sumptuary legislation, was as stoutly denied as would have been a legislative attempt to dictate the citizen's religious belief and form of worship. In the view of the strongest advocate of a paternal government, at that time and for seventy years thereafter, the operations of enacted law were to be confined entirely to matters of public moment, in no wise giving unequal advantage to any one class of citizens over another. Equality under the law had not then become, through the uncalled-for exercise of legislative powers, a mere legal fiction, but was a substantial fact. The government took no man's property unjustly through an abuse of legislation, nor had it favored citizens upon whom it bestowed the privileges which it denied to itself. When legislation had secured the protection of the individual in those things which were absolutely essential to his happiness and which were beyond his own gaining, its work was fully accomplished. The making of the government by statute a partner in the citizen's private business successes and failures was a thing unknown. There was no attempt to create either law-made wealth or law-made money. If tax enactments were to find a place upon the statute book, it was that the treasury might have the means wherewith to meet the expenses of a government economically administered. The measure of the rate of taxation to be enacted from the citizen was the measure of the government's legitimate needs and not of the selfish requirements of private interests. If monetary legislation was demanded the object of the law to be enacted was simply to ratify the decrees of the commercial world and not to defy or nullify them. The improvements undertaken at governmental expense were undeniably for the general good and not in aid of mere local interests. The employer and employee, the capitalist and laborer, all worked out their own difficulties, and it cannot be successfully denied that the relations created between these classes by their own acts were as harmonious and profitable as at present, when on every statute book are to be found innumerable labor acts.

Nothing was more evident during the period when such political ideas obtained than the soundness of the views of every public man upon public questions, saving always upon that of

slavery ; and even on that question the view favorable to slavery was in defence of that which was deemed a property right. The opinions of the private citizen and of the publicist were equally well founded. The government was not deemed the creator of value in the country's currency, nor was it looked upon as the legitimate source of the individual's wealth. Bryanism, embracing as it does all the heresies and dangers of Socialism and Communism, could not have been a possible growth at any time within the first three-quarters century of the republic. The most ardent Jacobin at the founding of the Democratic party, filled with the ideas of the French Revolutionist, would have rejected such a combination of evils and false theories of government as it embodies, as foreign to the underlying foundations of the republic and wholly undemocratic. No Federalist would have tolerated so great an extension of paternalism or believed it to be compatible with the welfare of the country. And yet, no thoughtful student of affairs can fail to appreciate how much of the strength and following which it exhibited a year ago is due to the belief, created in a great mass of the people through a perversion of legislative power, that legislation is the true corrective for all the forms of misery from which the nation suffers. We have swung from the extreme of individualism to the extreme of paternalism, to the detriment of all classes of the people and of all sections of the country. Out of the ill-considered and unnecessary legislative acts, designed to grant the citizen relief in matters which are beyond the duty of the government, have been born more than one issue of a destructive character. It has been an easy thing for the charlatan and demagogue to point to acts of paternalism done in behalf of one interest, and to ask if such acts should not reach to all. There is no consistent answer to the argument that if bounties and benefits are granted through law to one they should be given to all. The only manner in which the question as to the bestowal of such benefits can be met successfully is by denying that it rests within the power of law and equity to bestow them upon any. With the barrier once broken down, there is no escape from the justice of the demand of the Socialist, Populist, and free silver advocate. The demand of each is consistent only with a paternal view of government, and with the exercise of paternal rights. It has no lodgment in any governmental system where the most important factor in

attaining success is individual effort. It cannot rest in a system which is declared to be based upon an established government "of the people, by the people, and for the people."

As against the legislation favored by a true interpretation of the duties of the law-making powers, we have had in recent years statutory enactments without limit, and of every kind and character. They have been designed to create wealth, banish complaints, increase the wage of labor, abolish points of dispute between employer and employee, regulate trade and commerce, banking and currency, make the waste places fruitful, render odious combined capital and curtail the powers of corporations. The most insignificant subjects have not been too trivial to be legislated upon, while the most important have received constant attention. And with what results? The wealth created by such means has been so quickly obtained, and so unevenly distributed, as in turn to be made the object of legislative attack and solicitude. On every side complaints and protests against existing adverse conditions are to be heard. The wage of the laborer is still subject to other laws than statutory ones, and instead of increasing in amount with added legislation, continues to fall. Each year there are yet witnessed disputes between employer and employee, and the country is far from being free of strikes and lock-outs. The harmonious relations which should exist between capital and labor are still wanting, despite the labor laws and arbitration boards existent in every State. The channels of trade and commerce, dominated by legislative decrees, still fail to give evidence of an increasing and continuing prosperity. The promise of that prosperity has more than once been made only to fail of fruition. In any proper view of the case it must continue to fall short of public expectations, so long as it rests dependent in the greatest measure upon the acts of any legislative body. The record is yet wanting in the history of our material prosperity where there has been as the result of law any greatly extended period of substantial progress. The reverse is more often witnessed. Such prosperity has in the end invariably culminated in panics, long continued business depression, and bankruptcy.

Turning to questions of banking and currency it is found that the people are still protesting against a banking system so inadequate as to fail to meet the needs of trade and commerce, and a currency system so ill-devised that it makes impossible a

proper transacting of the daily volume of the country's business. All this remains, though the legislative body of the country has more than once enacted statutes designed to improve both. Anti-trust legislation and anti-corporation acts have yielded no results, except to cause a suspicion, upon the part of the general public, that possibly back of more than one legislative attack upon corporate capital in the alleged interests of the people, are demagoguery and blackmail. Legislation upon labor problems and corporate rights clearly unconstitutional in its provisions has not infrequently found place in the acts of many legislative bodies solely to meet a temporary political emergency; and when such legislation has been made the subject of judicial investigation and annulled by judicial decision, the courts have been assailed as in league with the rich, as against the well-being of the poor. Much of the feeling embodied in political platforms and uttered on the stump, directed against the judiciary of the land, has found its inception in paternal legislation. Whenever the courts, and it is to be said to their credit they have seldom failed to meet the duty confronting them, have declared against such legislation as traversing legitimate legislative functions, those responsible for unconstitutional enactments have been quick to accuse them of a want of fidelity to their trust and of a failure to appreciate the abuses which such legislation, it is claimed, would correct.

The seriousness of the situation wrought by over-legislation is many sided. It has made statutory enactment, notwithstanding prohibitory provisions in the constitution of a majority of the States against special legislation, distinctively special legislation. If in many instances it appears to be general in its object and scope, it is so in appearance only. The thing to be accomplished is wholly individual, and for individual benefit. The legislative bodies of the country and the legislators themselves have suffered in reputation and standing from their zeal in this direction. The general public cannot believe that everyone engaged in business, whether that business is of large or small proportions, is an enemy to the people and a despoiler of the country. Fortunately, a point has not yet been reached when the accumulation of capital and the earning of a substantial income is looked upon by the majority of the people as a crime against society. It is also doubtful whether all virtue and disinterested patriotism rest in those

who constitute the enacting powers. If, as has been argued, a notable decline has come about in the moral tone and statesman-like ability of the men who are elected to legislative places, not the least reason for it rests in the loss of respect for the legislative office itself—a thing made possible only through rendering it by such a course ineffectual as an agency for public good. But these results are of small consequence as compared with the immeasurably greater evil of that threatened deadening of individual effort in the business world through the force of paternalistic legislation. The evidences accumulate with each successive session of every legislative body of a lack of the citizen's reliance on self, and in that self-abnegation he is given encouragement by too willing legislators. In the end, however, he must fall back in the struggle for existence upon his own energy, ability, integrity, prudence, and judgment. The danger springs from the discontent bred when at last it is found that the government is powerless to aid and the legislation relied upon, instead of benefiting, has proven to be a hindrance through its attempting to regulate things beyond its province. If the country is to be free from the forces that threaten its political and financial integrity, the first and greatest reform to be entered upon should be the eliminating of unnecessary and unwise legislation. It should be undertaken in order that legislation may no longer menace all lines of business, but be restricted to those matters which are proper objects of legislative control. And concurrently with such reform, the citizen must know and act upon the lesson drawn by Blanqui from the hazardous attempts of the French revolutionist: "That the finest laws are not sufficient to secure to each citizen a prosperous condition if he does not co-operate with them by his labor and his morality. All the wealth and felicity which the philanthropy of legislation could decree was decreed; and the people learned that public wealth followed other laws than those of force and tyranny. It forced governments and individuals to see the elements of future greatness elsewhere than in legislative programmes."

JAMES H. ECKELS.